

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

VICKI L. CRAFT,

Plaintiff,

Case No: 1:08-cv-1151

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**OPINION AND ORDER**

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court affirm the Commissioner's decision to deny disability insurance benefits. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and enters this Opinion and Order.

One of the issues in this case was the weight to accord the opinion of plaintiff's treating physician, Peter Cooke, M.D. In his February 27, 2007 "Medical Assessment of Ability to Do Work-Related Activities," Dr. Cooke answered three inquiries under the form's heading "Positions." First, Dr. Cooke opined that during an 8-hour workday, plaintiff could sit/stand/walk for only one-half hour without interruption (2/27/2007 Assessment [TR 338] at ¶ 1-A). Second, Dr. Cooke

opined that with three breaks during the 8-hour workday, plaintiff could sit for a total of one hour, stand for a total of three hours, and walk for a total of three hours (*id.* at ¶ 1-B). Third, Dr. Cooke opined that the “total hours that the above claimant could perform the above activities if allowed to alternate during an 8 hour work day” was a combined three hours (*id.* at ¶ 1-C).

The Administrative Law Judge (ALJ) held that “Dr. Cooke’s medical assessment of the claimant’s ability to do work-related activities is given no controlling weight because there is not medical evidence to support his opinion of the claimant’s physical limitations” (TR 28). Plaintiff challenged the ALJ’s holding on appeal, but the Magistrate Judge disagreed with plaintiff’s argument. Upon review of the record, the Magistrate Judge determined that the ALJ had “articulated good reasons, supported by substantial evidence, for affording less than controlling weight to Dr. Cooke’s opinion” (R & R, Dkt 11 at 11).

Plaintiff’s objections to the Report and Recommendation are not entirely clear, but she appears to rely on the claim that the Magistrate Judge erred in making the factual statement that “[t]he doctor reported that during an 8-hour workday, plaintiff can sit for one hour, stand for three hours, and walk for three hours” (Pl. Obj., Dkt 12 at ¶ 2; R & R, Dkt 11 at 11). As compared to Dr. Cooke’s assessment detailed above, the Magistrate Judge’s statement is not inaccurate. Plaintiff attempts to create error by asserting that the Magistrate Judge’s statement “fails to note that Dr. Cooke specifically limited the activities to no more than a combined three hours per day” (Pl. Obj., Dkt 12 at ¶ 2).

The Court is not persuaded by plaintiff’s argument. It is the Commissioner who is charged with finding the facts relevant to an application of disability benefits, and this Court’s jurisdiction is confined to a review of the Commissioner’s decision and of the record made in the administrative

hearing process. *See* 42 U.S.C. § 405(g). That the Magistrate Judge did not reiterate in the Report and Recommendation each of the three opinion statements made by Dr. Cooke in his assessment does not indicate that the Magistrate Judge erred in her recommendation to affirm the ALJ's application of the treating physician doctrine to the facts of this case. Rather, the Court agrees with the Magistrate Judge that the record made in this case supports affirmance of the ALJ's decision because there is substantial evidence in the record that contradicts Dr. Cooke's opinion and that supports the ALJ's decision to grant his opinion less than controlling weight.

Accordingly:

**IT IS HEREBY ORDERED** that the Objections (Dkt 12) are DENIED, the Report and Recommendation of the Magistrate Judge (Dkt 11) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

A Judgment will be entered consistent with this Opinion and Order.

Dated: April 28, 2010

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge